

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, DC 20436

In the Matter of

**CERTAIN ABRASIVE PRODUCTS  
MADE USING A PROCESS FOR  
POWDER PREFORMS, AND  
PRODUCTS CONTAINING SAME**

**Inv. No. 337-TA-449**

**NOTICE OF COMMISSION DECISION TO AFFIRM ALJ ORDER NO. 40 AND NOT  
TO REVIEW A FINAL INITIAL DETERMINATION FINDING A VIOLATION OF  
SECTION 337; SCHEDULE FOR FILING WRITTEN SUBMISSIONS ON REMEDY, THE  
PUBLIC INTEREST, AND BONDING**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the final initial determination (ID) issued by the presiding administrative law judge (ALJ) on February 8, 2002, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation, and determined to affirm ALJ Order No. 40 issued by the ALJ on October 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3041. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Copies of the public version of ALJ Order No. 40, the Commission's opinion affirming that Order, the ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 5, 2001, based upon a complaint filed on January 5, 2001, by Minnesota Mining & Manufacturing Co.

("3M") of St. Paul, Minnesota and Ultimate Abrasive Systems, LLC ("UAS") of Atlanta, Georgia. 66 *Fed. Reg.* 9720 (Feb. 9, 2001). Their complaint named Kinik Company ("Kinik") of Taipei, Taiwan and Kinik Corporation ("Kinik Corp.") of Anaheim, California as respondents.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and selling within the United States after importation certain abrasive products that are made using a process for making powder preforms that is covered by claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 ("the '489 patent"), owned by UAS and exclusively licensed to 3M. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

Complainants moved to terminate the investigation with respect to Kinik Corp. after they concluded that Kinik Corp was not manufacturing or importing products that infringed the '489 patent. The ALJ granted this motion on June 19, 2001, in an ID (Order No. 15) and the Commission determined not to review that ID. On August 8, 2001, the ALJ issued an ID (Order No. 19) that the economic prong of the domestic industry requirement was satisfied with respect to the claims at issue of the '489 patent, and the Commission determined not to review that ID.

An evidentiary hearing was held on October 10-17, 27, and 30, 2001. On February 8, 2002, the ALJ issued his final ID, in which he determined that Kinik's accused DiaGrid abrasive products infringed claims 1, 4, 5, and 8 of the '489 patent and that the '489 patent was valid and enforceable. Based upon these findings, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of all Kinik abrasive products that infringe the '489 patent, which includes products produced using Kinik's DiaGrid process. He also recommended issuance of a cease and desist order, and a bond during the Presidential review period in the amount of 5 percent of the entered value of the infringing Kinik products.

On February 21, 2002, Kinik petitioned for review of the ALJ's final ID. Kinik also appealed Order No. 40, issued by the ALJ on October 12, 2001. That Order precluded Kinik from asserting 35 U.S.C. 271(g) as a non-infringement defense. On February 28, 2002, 3M and the Commission investigative attorney (IA) filed oppositions to Kinik's petition for review and its appeal of Order No. 40.

Having reviewed the record in this investigation, including the parties' written submissions, the Commission has determined to affirm Order No. 40 and not to review the ID in its entirety. The Commission will issue an opinion explaining its reasons for affirming Order No. 40.

In connection with final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in Kinik being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background information, see the Commission Opinion, Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337-TA-360, USITC Publication 2843 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

**WRITTEN SUBMISSIONS:** The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the February 8, 2002 recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on April 11, 2002. Reply submissions must be filed no later than the close of business on April 18, 2002. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 C.F.R. § 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and sections 210.42, 210.43, 210.45, 210.46, and 210.50 of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.42, 210.43, 210.45, 210.46, and 210.50.

By order of the Commission.

Marilyn R. Abbott  
Secretary

Issued: March 29, 2002